



**STATE OF VERMONT
HUMAN RIGHTS COMMISSION**
135 STATE STREET, DRAWER 33
MONTPELIER, VT 05633-6301
TEL: (800) 416-2010 or (802) 828-2480 (Voice/TDD)
FAX: (802) 828-2481
E-Mail: human.rights@hrc.state.vt.us

**INVESTIGATIVE REPORT
PA02-0029**

CHARGING PARTY: Denise McCarty
RESPONDING PARTY: Freedom Chevrolet
CHARGE: Public Accommodations/Sex

SUMMARY OF CHARGE: On July 2, 2002 Denise McCarty filed a Charge of Discrimination against Freedom Chevrolet alleging that it discriminated against her because of her sex by telling her that her car needed additional work before it would pass inspection. In contrast, when her husband took the car in for inspection, Freedom Chevrolet said nothing was wrong with the car and it passed inspection.

SUMMARY OF RESPONSE: ON July 22, 2002 Freedom Chevrolet file a Response to the charge denying that it discriminated against Ms. McCarty because of her sex. Freedom Chevrolet stated that its technician had no knowledge of the sex of the owner of the vehicle he was inspecting. The technician did not believe that the car passed inspection. Ms. McCarty's husband performed the required repairs on the car and when he brought the car back to Freedom Chevrolet, it passed inspection.

PRELIMINARY RECOMMENDATION: This investigative report makes a preliminary recommendation that the Human Rights Commission find that there are reasonable grounds to believe that Freedom Chevrolet discriminated against Ms. McCarty because of her sex in violation of 9 V.S.A. §4502(a) of the Vermont Fair Housing and Public Accommodation Act.

SUMMARY OF INVESTIGATION:

Interviews:

Ed Gingras, 11/21/02
Kevin Hoskins, 11/26/02
Denise Kingsbury, 12/12/02
Denise McCarty, 11/22/02
Mike McCarty, 11/22/02

Documents:

Charge of Discrimination, 7/7/02

Charging Party response to RFI, 7/5/02

Response to Charge of Discrimination and RFI, 7/22/02

I. Facts**A. Background**

1. **Denise McCarty** lives in Waterbury Vermont. She owns a 1992 Subaru that had 141,571 miles at the time of the initial incident. **Mike McCarty** is her husband.

2. At the time of the incident, **Kevin Hoskins** was the Service Manager at Freedom Chevrolet in Waterbury. He is now the Parts Manager. **Ed Gingras** worked as a Service Technician at Freedom Chevrolet for four years. Mr. Gingras no longer work for Freedom Chevrolet. Mr. Gingras has worked as an automotive service technician for about 15 years, is certified to conduct state vehicle inspections, and over the years had conducted hundreds of vehicle inspections.

3. **Denise Kingsbury** is the Motor Vehicle Inspector for the Department of Motor Vehicles in Washington and Orange counties, as well as parts of Lamoille and Caledonia counties.

B. The circumstances

17. **Ms. McCarty:** On May 29, 2002 Ms. McCarty dropped her car off at Freedom Chevrolet for its annual inspection. She spoke briefly with Mr. Hoskins, informing him why she was there and that the inspection sticker on her car had expired at the end of April. When she returned at the end of the day, Mr. Hoskins informed her that they had not been able to pass her car for inspection because the exhaust system was leaking in two places but did not specify where. He also told Ms. McCarty that the baffles were coming apart in the muffler and that it would need to be replaced. Mr. Hoskins had an invoice printed up with the cost of the inspection

as well as an explanation of what needed to be fixed and an estimate of \$242.23 for the repairs. Ms. McCarty immediately questioned the findings as she has just had a new muffler put on her car in the fall of 2001. Mr. Hoskins told her she should check the warranty on the muffler and told her they could fix it or she could get it fixed elsewhere and return the car within two weeks and they would inspect it again free of charge. Ms. McCarty does not know if Mr. Hoskins looked at her car during the inspection; he did not say that he had looked at the car. Ms. McCarty paid for the inspection that day even though it did not pass. Ms. McCarty said that Mr. Hoskins was friendly during this conversation.¹

18. **Mr. Gingras:** Mr. Gingras said that when he inspected the car, he found that the donut gasket was rusted and leaking and that the baffles were loose in the muffler.² For those reasons, he failed the car for inspection. He said that while he was conducting the inspection of the McCarty's car, the shop foreman came by also said the baffles were bad.³ Mr. Gingras stated that Mr. Hoskins did not tell him who owned the car or that the owner was female.

19. **Mr. Hoskins:** Mr. Hoskins said that he did not tell Mr. Gingras who owned the car or that the owner was a woman. Mr. Hoskins stated that Mr. Gingras told him the car needed a new muffler and a new front pipe seal at the exhaust manifold because both were leaking. He gave Ms. McCarty an estimate of \$242⁴ for the repairs. He said that Ms. McCarty questioned the problems so Mr. Hoskins went and looked at the car, he found that the muffler was not leaking but that the front pipe seal was leaking and needed to be replaced. Since the muffler did not need

¹ Ms. McCarty said that she had not interacted with Mr. Hoskins during any of the previous occasions she had brought her car to Freedom Chevrolet for inspections and had not had any problems during those previous visits.

² Mr. Gingras stated that he checks for exhaust leaks by running his hand or a piece of paper along the pipes to feel for leaks and by checking for black residue which may be a sign of a leak. He checks the baffles in the muffler by knocking his fist or a rubber mallet along the muffler.

³ According to the manual for state vehicle inspections and Denise Kingsbury, a Motor Vehicle Inspector for the Department of Motor Vehicles, loose baffles will not cause a car to fail inspection.

⁴ Mr. Hoskins said that estimate included parts and labor.

replacement, Mr. Hoskins reduced the repair estimate to \$61. Ms. McCarty told Mr. Hoskins that her husband would make the repairs.

20. **Ms. McCarty:** On June 1, 2002 Ms. McCarty asked her husband to examine her car for exhaust leaks.⁵

21. **Mr. McCarty:** Mr. McCarty tested for leaks by plugging the muffler with rags to see if they would blow out. The rags blew out, indicating to Mr. McCarty that the car had no exhaust leaks. He also asked his wife to hold the rags in the tailpipe so that he could run his hands along the exhaust system to look for any leaks. He said he found no evidence of sooting or water leakage (both signs of leakage) around the donut gasket (the front pipe seal where Mr. Hoskins had said there was a leak). Mr. McCarty also said that he found no evidence of loose baffles in the muffler.⁶ He told Ms. McCarty to take her car back to Freedom Chevrolet, tell them it was fixed, and to have them inspect the car again.

22. **Ms. McCarty:** On June 3, 2002 Ms. McCarty took her car back to Freedom Chevrolet for re-inspection. Mr. Hoskins asked if the exhaust system had been fixed and Ms. McCarty said yes. She left her car with Mr. Hoskins at 8:00 a.m. and returned at 10:00 a.m. to pick up the car. When she returned, Ms. McCarty said Mr. Hoskins looked upset and informed her that the car was not inspected because it did not look like it had been fixed. Mr. Hoskins said that he looked at the car himself and found that while it did not look like the car needed a new muffler, the exhaust manifold was still leaking and the baffles were coming apart inside the muffler. He revised the repair estimate from \$242 down to \$61. He told Ms. McCarty that the leak needed to be fixed or they could not pass the car for inspection. Ms. McCarty told Mr.

⁵ Mr. McCarty is a full-time F-16 crew chief for the Vermont Air National Guard as well as a Maintenance Technician at Green Mountain Coffee Roasters. Previously he worked as an auto mechanic for two years and he does all the maintenance work on his own car and his family's cars.

⁶ Mr. McCarty performed car inspections when he worked as an auto mechanic. He said that even if the baffles were loose in the muffler, that condition would not cause a car to fail inspection.

Hoskins that her husband had looked at the car, tested it for exhaust leaks by stuffing rags into the tailpipe, and had not found any leaks. Ms. McCarty asked Mr. Hoskins to explain what was wrong so she could write it down and tell her husband. She told Mr. Hoskins that she would be back after speaking with her husband.

23. **Mr. Gingras:** On the morning of June 3, 2002, when Mr. Gingras re-inspected the McCarty's car he found that no work had been done on the car except the bolts had been tightened on the exhaust manifold pipe. Later that day Mr. Hoskins told Mr. Gingras to pass the car because he (Mr. Hoskins) had not found any leaks. When Mr. Gingras asked Mr. Hoskins about the loose baffles in the muffler, Mr. Hoskins did not respond. Mr. Hoskins told Mr. Gingras that the decision was his and that it would not affect Mr. Gingras' vehicle inspection license. That day, neither Mr. Hoskins nor Mr. McCarty looked at the car with Mr. Gingras and he did not know if Mr. Hoskins inspected the car by himself. Mr. Gingras said that Mr. Hoskins was not certified to conduct state vehicle inspections.

24. **Mr. Hoskins:** Mr. Hoskins said that when Ms. McCarty brought her car back for re-inspection on June 3, she told Mr. Hoskins that her husband had tightened the bolts on the front pipe seal. She told Mr. Hoskins that her husband did all the repairs on her car but did not tell Mr. Hoskins that her husband was an auto mechanic. When Mr. Gingras looked at the car, he found that no repairs had been made. When Mr. Hoskins told Ms. McCarty, he said she seemed surprised. She then told Mr. Hoskins that she would have her husband return with the car to show Mr. Hoskins what he had done and so that Mr. Hoskins could explain to Mr. McCarty what was wrong with the car.

25. **Ms. McCarty:** Ms. McCarty immediately went to speak with her husband about the problems reported by Mr. Hoskins. Mr. McCarty said he would take the car back to Freedom Chevrolet that afternoon and speak with Mr. Hoskins.

26. **Mr. McCarty:** Mr. McCarty took the car at 1:00 p.m. and told Mr. Hoskins what he had done to check for exhaust leaks and had found none.⁷ He did not tell Mr. Hoskins that he was an auto mechanic. Mr. McCarty then asked Mr. Hoskins to put the car on a lift to show him what where the car leaking exhaust so that he could fix it. Mr. Hoskins took the car to the back of the building and came back to the front office where Mr. McCarty was waiting. Mr. Hoskins told Mr. McCarty that the car sounded fine, that there was no soot on the exhaust system, and that they were going to go ahead and put an inspection sticker on the car. Mr. McCarty said that Mr. Hoskins was gone no more than 2 minutes before he returned to the customer waiting area. Mr. McCarty also said that he could see into the garage from the waiting area and that he did not see Mr. Hoskins drive the car into the garage or put it up on a lift. Mr. McCarty never left the waiting area to look at the car with Mr. Hoskins. When Mr. Hoskins returned, he told the service technician that Mr. McCarty had put rags into the tailpipe, had found no leaks, and that was fine with him (Mr. Hoskins) so the service technician should put the sticker on the McCarty's car. Mr. McCarty said that service technician looked disgusted but proceeded to fill out the inspection paperwork. Mr. McCarty never spoke directly with the service technician.

27. **Mr. Hoskins:** When Mr. McCarty returned later that day with Ms. McCarty's car, Mr. Hoskins looked at the car with Mr. McCarty. Mr. Hoskins stuffed the tail pipe with rags to check for leaks and found none. Mr. Hoskins then told Mr. Gingras to pass the car for inspection. Mr. Gingras was reluctant to do so but Mr. Hoskins said it was his decision and that

⁷ Mr. McCarty stated that he did not tighten any bolts around the donut gasket as reported by Mr. Gingras and Mr. Hoskins. If Mr. McCarty had found leaks in the exhaust system, he would have fixed them before telling his wife to take the car back for re-inspection.

if it was incorrect, it would not affect Mr. Gingras' technician's license. Mr. Hoskins said that he does not have a license to conduct state vehicle inspections.

28. **Ms. McCarty:** On June 8th, while she was cleaning out her car, Ms. McCarty noticed that her car registration and proof of insurance were not in her car. On June 10th, she called Freedom Chevrolet to see if they had her registration and proof of insurance. Mr. Hoskins told her they had the documents. When Ms. McCarty asked when they were going to call her to tell her they had her documents, Mr. Hoskins told her they had tried and then had gotten busy. When she went in to pick up the documents, Ms. McCarty told Mr. Hoskins she was not happy about how they had handled the inspection of her car because when she had come in twice, they would not pass her car for inspection, but when her husband brought the car in, they did pass the car. Mr. Hoskins told her that he had relied on his technicians to tell him what was wrong with the car and that the technician had made a mistake. Ms. McCarty told Mr. Hoskins that he had looked at the car the second time she came in and he denied that he looked at the car and continued to blame his technicians. Then Mr. Hoskins got a phone call and left.

29. **Mr. Hoskins:** Ms. McCarty returned a week later to voice her concern that Freedom Chevrolet had discriminated against her because of her sex. Mr. Hoskins told Ms. McCarty that the problem was due to poor communication that he wished she had been present when Mr. McCarty returned with the car on June 3, 2002. He said that he had tried to call her once at work but did not leave a message and apologized for having her registration.

C. Additional information

17. Mr. and Ms. McCarty both stated that the need for repair work would not have been a problem as Mr. McCarty could have easily fixed any leaks in the exhaust system.

18. According to the records of Freedom Chevrolet, Ms. McCarty had previously brought her car in for inspection on December 31, 1998, January 7, 2000, and March 2, 2001. Her car passed inspection each time and did not require any repairs.

19. Mr. Gingras said that Freedom Chevrolet has never told him to falsify inspection results in order to generate repair business.

20. Mr. Gingras stated that he and Mr. Hoskins did not get along and that he believed that Mr. Hoskins did not think that he knew what he was doing or could do his job.

21. 23 V.S.A. §1227 states that “[p]eriodic inspections may be performed only by mechanics who have been certified by the commissioner.” Administrative penalties are assessed for various violations of motor vehicle inspection rules, including when uncertified or unauthorized persons conduct inspections; when improper, inaccurate, or incomplete recording of information is including on inspection records; and when there is fraudulent recording of information on inspection records.

II. Analysis

The Vermont Fair Housing and Public Accommodations Act, 9 V.S.A. §4502(a) provides:

(a) An owner or operator of a place of public accommodations or an agent or employee of such owner or operator shall not, because of . . . sex . . . of any person, refuse, withhold from or deny to that person any of the accommodations, advantages, facilities and privileges of the place of public accommodation.

Direct evidence of discrimination is rarely available. However, a charging party may use circumstantial evidence to prove discrimination. When circumstantial evidence is used, the charging party must first establish a prima facie case by a preponderance of the evidence. To

make out a prima facie case of discrimination in public accommodations, Ms. McCarty must show the following:

1. She is a member of a protected category;
 2. the respondent's establishment and/or service constitute a place of public accommodation; and,
 3. the respondents discriminated against her by not treating her in a manner comparable to the treatment it provides to persons outside the protected category.
- (Adapted from *Shellenberg v. Elks Lodge No. 2225*, 228 Mich.App. 20, 1998)

As a woman, Ms. McCarty is a member of a protected category (first element). Freedom Chevrolet is a place of public accommodation (second element). Ms. McCarty alleged that Freedom Chevrolet treated her differently because of her sex. Specifically, she alleged that when she brought her car in for its state inspection on two occasions, Freedom Chevrolet would not pass her car for inspection. However, when her husband brought the car back a third time to Freedom Chevrolet, the car was passed for inspection (third element). It appears that Ms. McCarty has established a prima facie case of disparate treatment discrimination.

Once the charging party has established a prima facie case, the respondent may proffer legitimate, non-discriminatory business reasons for its actions. In this case, Freedom Chevrolet asserted that its service technician consistently rejected the car for inspection due to exhaust system leaks and that he did so without knowing the sex of the owner. When the respondent provides legitimate, non-discriminatory reasons for its actions, the burden returns to the charging party to show, by a preponderance of the evidence, that the proffered reasons were merely a pretext for unlawful discrimination.

The first time Ms. McCarty brought her car in for inspection, Mr. Hoskins told her that the exhaust system was leaking in two places and the muffler needed to be replaced and consequently her car failed the state inspection. The second time she brought the car in for inspection, Ms. McCarty told Mr. Hoskins that her husband had fixed the problems with the

exhaust system but she was told again that the car failed inspection because when Mr. Gingras looked at the car, he found that no repairs had been made to the exhaust system. According to Ms. McCarty, during that second visit, she explained to Mr. Hoskins what her husband had done to check for leaks in the exhaust system and had found none. Mr. Hoskins told her that he had also looked at the car (even though he was not qualified to do so) and found that the muffler did not need replacement, but that the donut gasket still needed to be replaced. Later that same day, Mr. McCarty took the car back to Freedom Chevrolet, told Mr. Hoskins what he had done to check for leaks, and asked Mr. Hoskins to show him where the leaks were in the exhaust system. Mr. Hoskins took the car around back and then instead of showing Mr. McCarty what the problems were, he simply told Mr. McCarty that they would pass the car for inspection because he (Mr. Hoskins) did not find any leaks in the system.

At all times, Mr. Gingras did not believe the car should pass inspection because of the leaking donut gasket and loose baffles in the muffler. While loose baffles would not cause a car to fail inspection, a leaking donut gasket would. Mr. McCarty stated that when he looked at the exhaust system after the first time the car failed inspection, he found no exhaust leaks or loose baffles in the muffler. Clearly, Mr. Gingras and Mr. McCarty are both experienced mechanics and qualified to inspect cars. There appears to be a professional difference of opinion as to whether or not leaks existed in the exhaust system. Had Mr. McCarty found leaks, he stated that he would have fixed them before allowing his wife to take the car for re-inspection.

In spite of this difference in professional opinion, the question remains as to why Mr. Hoskins passed the car for inspection only after Mr. McCarty returned with the car. While Ms. McCarty had explained to Mr. Hoskins what her husband had done to check for leaks in the exhaust system, Mr. Hoskins did not order Mr. Gingras to pass the car for inspection until after


Mr. McCarty told him the same thing. It appears that Mr. Hoskins took Mr. McCarty's word over the word of Ms. McCarty and in spite of Mr. Gingras' consistent assessment that the vehicle did not meet the inspection requirements. In addition, while Mr. Hoskins made the final decision to pass the car for inspection, he was not qualified to conduct vehicle inspections, a clear violation of state law. Was Mr. Hoskins' decision motivated by the fact the Mr. McCarty was male, or was Mr. Hoskins' behavior simply inconsistent and unprofessional?

On the surface, it would appear that Freedom Chevrolet did treat Ms. McCarty differently because she is a woman. On the one hand, at no time was Mr. Gingras aware that the owner of the car was female. His opinion (right or wrong) as to whether the car should pass inspection never wavered. On the other hand, it was Mr. Hoskins who made (unqualified) assessments as to what was wrong with the car and ultimately the final decision as to whether the car should pass inspection. In spite for both Ms. McCarty's and Mr. McCarty's explanations of what had been done to check for exhaust leaks, Mr. Hoskins did not decide to pass the car for inspection until after Mr. McCarty spoke with him. Has Ms. McCarty shown by a preponderance of the evidence that Freedom Chevrolet discriminated against her because of her sex? In *Matras v. Amoco Oil Co.*, 424 Mich. 675, 385 N.W.2d 586 (1986), the court held that:

In a [sex] discrimination case, the question thus becomes whether the plaintiff has presented evidence 'which, when viewed in the light most favorable to the plaintiff, would permit a reasonable jury to find that [her car was not passed for inspection] because of [her sex].' . . . A jury can find that the [failure] was 'because of [sex]' even if [sex] was not the sole factor. As accurately expressed in the Michigan Standard Jury Instruction, '[sex] does not have to be the only reason, or even the main reason, but it does have to be one of the reasons which made a difference in determining whether or not to [discriminate against] the plaintiff.' Another formulation would be that [sex] is a determining factor when the unlawful adverse action would not have occurred without [sex] discrimination.

Given that only Mr. Hoskins interacted with Ms. McCarty and her husband and that Mr. Hoskins made the ultimate decision about whether the car should pass inspection, it appears that the fact that Ms. McCarty was a woman was a significant reason why Mr. Hoskins would not initially pass the car for inspection.

PRELIMINARY RECOMMENDATION: This investigative report makes a preliminary recommendation that the Human Rights Commission find that there are reasonable grounds to believe that Freedom Chevrolet discriminated against Ms. McCarty because of her sex in violation of 9 V.S.A. §4502(a) of the Vermont Fair Housing and Public Accommodation Act.



Tracey Tsugawa, Investigator



Robert Appel, Executive Director

December 17, 2002
Date

STATE OF VERMONT
HUMAN RIGHTS COMMISSION

Denise McCarty,
Charging Party,

v.

Freedom Chevrolet, Inc.,
Respondent.

)
)
)
) Charge No.: PA02-0029
)
)
)

FINAL DETERMINATION

Pursuant to 9 V.S.A. §4554, the Vermont Human Rights Commission enters the following Order:

1. The following vote was taken on a motion to find that there are reasonable grounds to believe that Freedom Chevrolet, Inc., the Respondent, discriminated against Denise McCarty, the Charging Party, in a place of public accommodations on the basis of sex in violation of 9 V.S.A. §4502(a) of the Vermont Fair Housing and Public Accommodations Act.

Erica Garfin, Chair	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Ellen Burgess	For <input type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input checked="" type="checkbox"/>
Kevin Christie	For <input type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input checked="" type="checkbox"/>
Christine Hart	For <input type="checkbox"/>	Against <input checked="" type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Charles Kletecka	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Entry: Reasonable grounds	<input checked="" type="checkbox"/>	Motion failed	<input type="checkbox"/>	

2. Since the Human Rights Commission found that there are reasonable grounds to believe that Freedom Chevrolet, Inc., the Respondent, discriminated against Denise McCarty, the Charging Party, in violation of the Vermont Fair Housing and Public Accommodations Act, a final attempt to resolve Charge No.: PA02-0029 through settlement shall be completed by **July 15, 2003**.

Dated at Montpelier, Vermont this 15th day of January 2003.

HUMAN RIGHTS COMMISSION

BY:

Erica Garfin

Erica Garfin, Chair

absent

Ellen Burgess

absent

Kevin Christie

Christine Hart

Christine Hart

Charles Kletecka

Charles Kletecka